

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

JENNILYN SALINAS, et al.,

Plaintiffs,

v.

NANCY PELOSI, et al,

Defendants.

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Case No. 6:21-cv-00162

JUDGE ALAN D. ALBRIGHT

MAG. JUDGE JEFFREY MANSKE

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DEFENDANT OHIO GOVERNOR MIKE DeWINE'S  
UNOPPOSED MOTION FOR LEAVE TO FILE *INSTANTER*

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Defendant Ohio Governor Mike DeWine moves this Court for leave to file his Motion to Dismiss (Doc. 88), filed May 21, 2021, *instanter* pursuant to Federal Rule of Civil Procedure 6(b)(1)(B). As required by Local Rule CV-7, Governor DeWine's counsel Caitlyn Nestleroth Johnson conferred via telephone with Plaintiffs' counsel Paul M. Davis this morning, and he does not oppose this Motion or the relief requested. A memorandum in support is attached.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

*/s/ W. Travis Garrison*

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*Counsel for the Ohio Defendants*

### MEMORANDUM IN SUPPORT

Defendant Ohio Governor DeWine received a copy of Plaintiffs’ Amended Complaint in his office via certified mail on April 30, 2021. *See* Exhibit A. Accordingly, Governor DeWine calculated his answer deadline pursuant to Fed. R. Civ. P. 12(a)(1)(A) as May 21, 2021—21 days later. Governor DeWine filed his Motion to Dismiss (Doc. 88) on that date.<sup>1</sup> On May 24, 2021, *after* Governor DeWine’s answer deadline, Plaintiffs filed proof of service with the Court indicating that Governor DeWine’s certified mail was actually signed for in the mailroom one day earlier, on April 29, thus making his answer deadline May 20 rather than May 21. *See* Doc. No. 103 at 19–20.

Courts have “broad discretion” to extend filing deadlines under Fed. R. Civ. P. 6(b). *Hetzel v. Bethlehem Steel Corp.*, 50 F.3d 360, 367 (5th Cir. 1995). A court may, for good cause, extend the time to perform an act “on motion made after the time has expired if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). To determine whether neglect was “excusable,” a court should consider the following: “(1) ‘the possibility of prejudice to the other parties,’ (2) ‘the length of the applicant’s delay and its impact on the proceeding,’ (3) ‘the reason for the delay and whether it was within the control of the movant,’ and (4) ‘whether the movant has acted in good faith.’” *Salts v. Epps*, 676 F.3d 468, 474 (5th Cir. 2012) (quoting Charles Alan Wright et al., *Federal Practice & Procedure* § 1165).

All of these factors strongly favor finding excusable neglect in this instance and allowing Governor DeWine to file his Motion to Dismiss (Doc. 88) *instantly*. The resulting single-day delay is minor and will not prejudice Plaintiffs, as this case is still in its infancy and many other

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<sup>1</sup> While Defendant Ohio Secretary of State Frank LaRose was also a party to the Motion to Dismiss, the docket does not reflect service of summons on him yet, and he does not believe he was served with a copy of Plaintiffs’ Amended Complaint before April 30, 2021. Therefore, he is not a party to this Motion.

Defendants' answers are not due until July. Moreover, Plaintiffs' proof of service was filed only yesterday, and Governor DeWine acted in good faith in filing his Motion to Dismiss last week, after calculating the due date for that Motion based on what appeared to be an April 30 date of service. Additionally, upon the filing of Plaintiffs' proof of service, Governor DeWine's counsel promptly conferred with Plaintiffs' counsel and prepared this Motion to remedy the deficiency.

For the above reasons, Defendant Ohio Governor Mike DeWine respectfully requests that the Court grant this Motion for Leave to File *Instante* and accept his already-filed Motion to Dismiss (Doc. 88) as timely filed on May 21, 2021.<sup>2</sup>

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

/s/ W. Travis Garrison

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*Counsel for the Ohio Defendants*

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<sup>2</sup> As Governor DeWine already filed his Motion to Dismiss with the Court, he is not attaching another copy to this Motion.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 25, 2021, the foregoing was filed with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties for whom counsel has entered an appearance. Parties may access this filing through the Court's system.

/s/ W. Travis Garrison

W. TRAVIS GARRISON (0076757)

Senior Assistant Attorney General